



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

TATTERSON *v.* FIDELITY & DEPOSIT CO. OF MARYLAND.

Sept. 11, 1913.

[79 S. E. 334.]

Principal and Surety (§ 183*)—Rights of Surety against Principal—Building Contract.—Where a contractor for the construction of a building abandoned his contract before completion, and the surety company which had given the contractor's bond, although notified of the abandonment, did not complete the building or employ others to do so, but instead the owners of the building entered into a contract with another contractor, who frequently completed contracts for the surety company and who agreed to complete the building for the balance due the first contractor and gave a bond executed by the same surety company, the surety company could not hold the estate of the first contractor liable for the loss sustained by the second contractor and which it voluntarily paid to him.

[Ed. Note.—For other cases, see *Principal and Surety*, Cent. Dig. §§ 539-544; Dec. Dig. § 183.* 13 Va.-W. Va. Enc. Dig. 59; 14 Va.-W. Va. Enc. Dig. 989; 15 Va.-W. Va. Enc. Dig. 971.]

Appeal from Court of Law and Chancery of City of Norfolk. Suit by Fidelity & Deposit Company of Maryland against Lizzie M. Tatterson, as executrix of the estate of Albert Tatterson, deceased, to establish a claim against the said estate and subject thereto certain property held by the executrix. Decree for the plaintiff, and defendant appeals. Reversed and remanded.

R. R. Hicks, of Norfolk, for appellant.

J. W. Happer and *Frank L. Crocker*, both of Portsmouth, for appellee.

VIRGINIA COAL & IRON CO. *v.* HYLTON et al.

Sept. 11, 1913.

[79 S. E. 337.]

1. Mines and Minerals (§ 55*)—Tenancy in Common (§ 8*)—Severance from Suffrage—Joint Tenants.—The general owner or owners of land may grant all the minerals therein or any particular species of them, while still retaining title to the surface, or they may grant the land and reserve the minerals, thus creating a separate estate in the minerals, distinct from the land in which they are found; but, where the land is owned by joint tenants, a conveyance by less than all does not effect a severance of the mineral interest from the surface, but

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

makes the grantee, if he be a stranger, a tenant in common with the joint tenant who did not unite in the conveyance.

[Ed. Note.—For other cases, see Mines and Minerals, Cent. Dig. §§ 153-165; Dec. Dig. § 55;* Tenancy in Common, Cent. Dig. § 20; Dec. Dig. § 8.* 9 Va.-W. Va. Enc. Dig. 828; 14 Va.-W. Va. Enc. Dig. 713; 15 Va.-W. Va. Enc. Dig. 676.]

2. Tenancy in Common (§ 43*)—Conveyance by Cotenancy.—While a tenant in common has capacity to transfer his individual share in the land, he has no right to convey any part of the land by metes and bounds, or to convey the mineral and reserve the surface to the prejudice of his co-owners.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 130-132, 136, 137; Dec. Dig. § 43.* 8 Va.-W. Va. Enc. Dig. 100; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Dig. 548.]

3. Tenancy in Common (§ 44*)—Conveyance of Interest by One—Effect.—Where one tenant in common cannot make any conveyance to the prejudice of his cotenants, yet such deed is not void, but is effectual to pass the interest conveyed, making the grantee a tenant in common with his grantor's cotenants, as provided by Code 1904, § 2419.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 133, 134, 136, 137; Dec. Dig. § 44.* 8 Va.-W. Va. Enc. Dig. 100; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

4. Tenancy in Common (§ 15*)—Conveyance by a Cotenant Stranger—Ouster.—Where a stranger to the title accepts a conveyance of the whole estate in a tract of land from a cotenant, and under such conveyance enters into exclusive possession of the land, claiming title to the whole, such conveyance and possession is an ouster of the other cotenants, and the grantee so entering and claiming title may sustain a claim by adverse possession, if continued for the statutory period.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 42-52; Dec. Dig. § 15.* 8 Va.-W. Va. Enc. Dig. 127; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

5. Tenancy in Common (§ 15*)—Possession of Cotenant—Adverse Possession.—While the entry and possession of one cotenant is ordinarily the entry and possession of all, which presumption will prevail until some notorious act of ouster or adverse possession is brought to the knowledge of the others, yet a tenant in common may enter adversely and claim in severalty, and where he does so the statute of limitations will run in his favor as against his cotenants.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 42-52; Dec. Dig. § 15.* 8 Va.-W. Va. Enc. Dig. 127; 14 Va.-W. Va. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

6. Tenancy in Common (§ 15*)—Conveyance under Warranty Deed—Adverse Possession.—Where a tenant in common, after partition of a part of the common property, received a deed to a specified part, purporting to convey the fee, and entered, not as a tenant in common, but as an owner of the entire property, and there was nothing to show that either he or those claiming under him ever acknowledged that the title was anything other than as appeared from the face of the deed, it will be presumed that he entered under the title which the deed purported to convey, both as to the boundary of the land and the nature of his title, and he and his successors, having held the land for more than 30 years, and paid taxes thereon as the owners of the fee, acquired title as against the other tenants by adverse possession, both as to the surface and subjacent mineral.

[Ed. Note.—For other cases, see Tenancy in Common, Cent. Dig. §§ 42-53; Dec. Dig. § 15.* 8 Va.-W. Va. Enc. Dig. 127; 14 Va.-W. Va. Enc. Dig. 594; 15 Va.-W. Va. Enc. Dig. 548.]

7. Adverse Possession (§ 106)—Color of Title—Mineral Interest.—Where defendants and their grantors, since 1880, had held possession under a deed purporting to convey the entire fee with covenants of general warranty, which deed constituted color of title, they acquired title to the surveys and to the underlying minerals by adverse possession as against claimants under a prior deed of an undivided mineral interest in the land from the common grantor.

[Ed. Note.—For other cases, see Adverse Possession, Cent. Dig. §§ 604-623; Dec. Dig. § 106.* 1 Va.-W. Va. Enc. Dig. 206; 41 Va.-W. Va. Enc. Dig. 23; 15 Va.-W. Va. Enc. Dig. 26.]

Appeal from Circuit Court, Wise County.

Suit by the Virginia Coal & Iron Company against George W. Hylton and others. Judgment for defendants, and complainant appeals. Reversed, in part, and affirmed in part.

Bullitt & Chalkley, of Big Stone Gap, for appellant.

Vicars & Peery, of Wise, and *Henry & Graham*, of Tazewell, for appellees.

STONEGAP COLLIERY CO. *v.* KELLY & VICARS.

Sept. 11, 1913.

[79 S. E. 341.]

1. Landlord and Tenant (§ 37*)—Construction of Lease—Construction against Lessor.—The language of a lease is to be construed most strongly against the lessor.

[Ed. Note.—For other cases, see Landlord and Tenant, Cent. Dig. § 98; Dec. Dig. 37.* 9 Va.-W. Va. Enc. Dig. 129.]

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.